IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

CRP.No. 3097 of 2001(G)

(ORDER DATED 8.10.01 IN O.S.303/96 ON THE FILE OF MUNSIFF COURT, MAVELIKKARA)

REVN. PETITIONER/DEFENDANT:

N. RAGHAVAN NAIR, CHENNANAKARA,
CHUNKKARA NADUVILAMURI,
CHUNAKKARA P.O., CHUNAKKARA VILLAGE.

BY ADV. SRI.R.RAMADAS

RESPONDENTS/PLAINTIFFS:

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1. R. MADHUSOODANAN PILLAI, S/O. VASUDEVAN NAIR, CHENNANKARATHARAYIL, CHUNAKKARA NADUVIL, CHUNAKKARA VILLAGE, ALLEPPY DISTRICT.

2. KUNJIPPILLAYAMMA, W/O. VASUDEVAN NAIR, CHUNAKKARATHARAYIL, CHUNAKKARA NADUVIL, CHUNAKKARA VILLAGE (DIED), ALLEPPEY DISTRICT.

3. PARVATHY AMMA, CHUNAKKARATHARAYIL, CHUNAKKARA NADUVIL, CHUNAKKARA VILLAGE, ALLEPPY DISTRICT.

BY ADV. SRI.PHILIP MATHEW

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.3097/01

ORDER ON C.M.P.6437/01 IN C.R.P.3097/01
DISMISSED.

08.12.2006. SD/- M.SASIDHARAN NAMBIAR, JUDGE,

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.3097 OF 2001

DATED THIS THE 8th DAY OF DECEMBER, 2006

ORDER

Defendant in O.S.303/96 on the file of Munsiff Court, Mavelikkara is the revision petitioner. Respondents are the plaintiffs. As per order dated, 8.10.01, objections filed by petitioner and respondents were recorded and the prayer of petitioner to set aside the report of the Commissioner was rejected.

2. Learned counsel appearing for respondents was heard. As held by the Division Bench of this Court in **Kanaran Nair Vs. Madhavan Nair (1996 (1) KLT 162)** an order refusing to set aside the report under Order XXVI Rule 10 is not a revisable order. Even otherwise, under proviso to Section 115, the order rejecting the prayer to set aside the report submitted by Commissioner is not revisable, as by that order it would not have finally disposed the suit.

3. Arguments of learned Counsel appearing for petitioner is that in that case, the extraordinary jurisdiction of this Court under Article 227 of Constitution of India is to be invoked. This Court in **C.K.Venketeram Nayidu Vs. C.R.Vasanthi and others(AIR 2000 Kerala 27)** and **A. Narayani Vs. Kittan @ Krishnan (1996(2) KLJ 489)** held that an order refusing to set aside the report is not an order

which can be interfered in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India. The report is only a piece of evidence and learned Munsiff has to consider the value of the report at the time of evidence. Petitioner is entitled to challenge the order of the Munsiff along with final judgment, if it is against him. As the order is only interlocutory in nature, nothing in the order would trammel the trial court from taking a different view, if otherwise satisfied at a subsequent stage. Revision petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

Acd

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.3097 OF 2001

ORDER

8.12.2006